IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 3RD DECEMBER 2007 / 12TH AGRAHAYANA 1929

Crl.MC.No. 3594 of 2007()

AGAINST THE ORDER IN CMP 2808/07. IN
CC.985/2004 of JUDL.MAGISTRATE OF FIRST CLASS-II, CHERTHALA

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PETITIONER: COMPLAINANT

SAIDHU MOHAMMED,
S/O KUNJU MUSLIYAR,
THEKKEKANNARAPPALIL NIKARTHU,
AROOKKUTTY P.O., CHERTHALA.

BY ADV. SRI.JOHN JUDE ISSAC

RESPONDENTS: COUNTER PETITIONER
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1. STATE OF KERALA, REPRESENTED BY
DIRECTOR OF PUBLIC PROSECUTION, HIGH COURT OF
KERALA, ERNAKULAM.

2. MUHAMMED MANZOOR, S/O AHAMMEDKUTTY,
KALAPPURACKAL VEEDU, THANGAL NAGAR,
PALLURUTHY, DIVISON NO.23,
KOCHIN CORPORATION.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.3594 of 2007

Dated this the 3rd day of December 2007

O R D E R

The petitioner is the de facto complainant in a crime registered at his instance alleging offence punishable under Sections 447, 379 and 506(II) read with 34 I.P.C. That complaint was registered on the basis of a private complaint filed by the petitioner and referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. Crime was registered. Investigation was conducted and final report was filed by the police alleging commission of the offence punishable under Section 379 I.P.C. Final report was filed against only one accused. In the complaint filed by the petitioner there was an allegation that not only the said person but his wife was also responsible for the commission of the offence. The investigating officer , in the course of investigation, did not accept that version of the complainant and chose to file the final report only against the sole accused now.

2. The petitioner appears to have accepted the final report. At any rate, he did not file any private complaint to assail the conclusions of the investigating officer in the final report.

3. At the stage of evidence, some witnesses were examined. Witnesses appear to have repeated the grievance raised in the original private complaint which was referred to the police and on which the crime was registered.

4. At that stage, the petitioner had filed an application under Section 319 Cr.P.C before the learned Magistrate to invoke such powers and issue process against the wife of the sole accused who had been originally shown in the private complaint as an accused. The learned Magistrate, by the impugned order, rejected the said prayer. The learned Magistrate took the view that merely because some witnesses have repeated the allegations which was found to be not sustainable by the police in the course of investigation, the learned Magistrate cannot, in the facts and circumstances of this case, be persuaded to invoke the powers under Section 319 Cr.P.C. The petitioner claims to be aggrieved by the said order.

5. I must alertly remind myself of the nature, quality and contours of the jurisdiction of this court under Section 482 Cr.P.C. Any and every error committed by a subordinate court, even assuming that such an error is committed, shall not

persuade this court to invoke the jurisdiction under Section 482 Cr.P.C. Has there been failure of justice? Is there any miscarriage of justice? Is there abuse of process of the court? These are the questions that this court will concern itself with while considering the prayer to invoke the powers under Section 482 Cr.P.C.

6. It will not be inapposite in this context to refer to the powers of the learned Magistrate under Section 319 Cr.P.C. Of course, where the conscience of the court is satisfied on the basis of the materials made available to the court that some person other than the accused facing the trial is also guilty of the offence alleged, certainly the discretion is available with such Magistrate to invoke the powers under Section 319 Cr.P.C. But merely because some witnesses have chosen to repeat the allegation which the investigating officer, in the course of investigation, has found to be untenable it will not be reasonable for this court to mechanically invoke the powers under Section 319 Cr.P.C. Having anxiously considered all the relevant inputs I am unable to persuade myself to agree that any such gross error has been committed by the learned Magistrate in passing

the impugned order under Section 319 Cr.P.C or that such order suffers from any such vice as to persuade this court from invoking the extraordinary inherent jurisdiction under Section 482 Cr.P.C

7. This petition is accordingly dismissed.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007